

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIA MAUCERE,

Plaintiff,

ORDER

19-CV-6406 (MKB) (JO)

v.

GLEN COVE CENTER FOR NURSING AND
REHABILITATION,

Defendant.

MARGO K. BRODIE, United States District Judge:

Plaintiff Maria Maucere commenced the above-captioned action on November 12, 2019, against Defendant Glen Cove Center for Nursing and Rehabilitation, asserting claims pursuant to the Rehabilitation Act of 1973, 29 U.S.C. § 791 *et seq.*, and the New York State Human Rights Law, NYS Executive Law Article 15. (Compl., Docket Entry No. 1.) On April 14, 2020, Plaintiff's counsel reported that Plaintiff had died on April 1, 2020. (Suggestion of Death, Docket Entry No. 12.) By Order dated April 15, 2020, Magistrate Judge James Orenstein directed Plaintiff's successor or representative to file a motion for substitution by July 13, 2020, and cautioned that without such a motion the court would dismiss the Complaint pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, which requires dismissal if such a motion "is not made within [ninety] days after service of a statement noting the death." Fed. R. Civ. P. 25(a)(1); (Order dated Apr. 15, 2020). No successor or representative filed a timely motion for substitution.

By report and recommendation dated July 17, 2020 (the "R&R"), Judge Orenstein recommended that the Court dismiss the action pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure and cautioned that "[f]ailure to file objections [by July 31, 2020,] designating the

particular issues to be reviewed waives the right to appeal the district court's order." (Report & Recommendation, Docket Entry No. 13 (first citing 28 U.S.C. § 636(b)(1); then citing Fed. R. Civ. P. 72(b)(2); and then citing *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010)).) No objections to the R&R have been filed and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cnty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP*, 596 F.3d at 92 ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court dismisses the action pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close this case.

Dated: September 21, 2020
Brooklyn, New York

SO ORDERED:
s/ MKB 9/21/2019

MARGO K. BRODIE
United States District Judge